

P.L. 2020, CHAPTER 145, *approved December 23, 2020*  
Assembly, No. 5119 (*First Reprint*)

1    **AN ACT** permitting reorganization of a health service corporation,  
2       supplementing P.L.1985, c.286 (C.17:48E-1 et seq.), and  
3       amending P.L.2001, c.131 and P.L.1970, c.22.

4  
5       **BE IT ENACTED** by the Senate and General Assembly of the State  
6       of New Jersey:

7  
8       1. (New section) The Legislature finds and declares that:  
9       a. It is in the interest of the subscribers of the health service  
10      corporation and the State of New Jersey that the health service  
11      corporation be afforded the ability to modernize its corporate  
12      structure, subject to appropriate standards, oversight, and approval,  
13      in order to meet the evolving health care needs of its subscribers,  
14      while continuing its statutory mission, and maintaining its status as  
15      a charitable and benevolent institution as declared in section 41 of  
16      P.L.1985, c.236 (C.17:48E-41).

17      b. Ensuring that the health service corporation statutes provide  
18      the opportunity for the health service corporation to reorganize  
19      itself efficiently and effectively in the form and manner authorized  
20      by P.L.       , c.        (C.       ) (pending before the Legislature as this  
21      bill) will facilitate increased utilization of 21st century technologies  
22      and tools to better address current challenges, improving both the  
23      State's healthcare infrastructure and its readiness to address future  
24      crises such as those resulting from the ongoing COVID-19  
25      pandemic. Such a reorganization, if undertaken, approved, and  
26      completed consistent with the provisions of P.L.       , c.        (C.       )  
27      (pending before the Legislature as this bill), also will promote vital  
28      investments and growth in health services and diversified  
29      businesses for the benefit of its members and the State.

30      c. Current law governing the health service corporation  
31      expressly permits the health service corporation to engage in certain  
32      actions that effectuate a corporate reorganization, subject to certain  
33      conditions, including potential conversion to a for-profit domestic  
34      stock insurer or other actions constituting a material change in its  
35      form, subject to the approval of the Commissioner of Banking and  
36      Insurance in the Commissioner's capacity as regulator of the  
37      business of insurance and the Attorney General in furtherance of the  
38      Attorney General's statutory and common law responsibilities as  
39      protector, supervisor, and enforcer of charitable trusts and

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AFI committee amendments adopted December 14, 2020.

1 charitable corporations. The current statutes do not, however,  
2 prescribe a clear path for the health service corporation to update  
3 and improve its corporate structure for the benefit of its members  
4 and the State while, at the same time, maintaining its non-profit  
5 status, continuing to adhere to the statutory mission to provide  
6 affordable and accessible health insurance and promote  
7 the integration of the health care system to meet the needs of its  
8 members, and fulfilling the health care obligations of a health  
9 service corporation as they exist prior to the reorganization.

10 d. Other states have authorized similarly situated nonprofit  
11 health insurance carriers to reorganize their corporate forms while  
12 maintaining their nonprofit legal status and purposes of the entities  
13 for the benefit of their subscribers and respective regional health  
14 care marketplaces.

15 e. Because a reorganization authorized pursuant to  
16 P.L. , c. (C. ) (pending before the Legislature as this bill)  
17 does not constitute a conversion or material change in form as  
18 defined pursuant to P.L.2001, c.131 (C.17:48E-49 et seq.), the  
19 currently existing statutory mission of the health service corporation  
20 to provide affordable and accessible health insurance and promote  
21 the integration of the health care system to meet the needs of its  
22 members shall continue unabated regardless of whether the health  
23 service corporation reorganizes in the manner authorized by  
24 P.L. , c. (C. ) (pending before the Legislature as this bill)  
25 or not.

26 f. It is also in the interest of the subscribers of the health  
27 service corporation and the State of New Jersey that the important  
28 statutory mission of the health service corporation continues to be  
29 upheld following any reorganization pursuant to  
30 P.L. , c. (C. )(pending before the Legislature as this bill);  
31 provided, however, that it is appropriate to expand and modernize  
32 that mission to encourage further innovation as well as  
33 improvement and diversification of services.

34  
35 2. (New section) As used in P.L. , c. (C. ) (pending  
36 before the Legislature as this bill):

37 “Assessment” means an initial and a limited duration assessment  
38 made upon the mutual holding company system pursuant to section  
39 13 of P.L. , c. (C. ) (pending before the Legislature as this  
40 bill).

41 “Commissioner” means the Commissioner of Banking and  
42 Insurance.

43 “Control” has the meaning set forth in section 1 of P.L.1970,  
44 c.22 (C.17:27A-1).

45 “Effective time” means the date and time at which the  
46 reorganization into a mutual holding company is effective, as

1 provided in subsection d. of section 5 of  
2 P.L. , c. (C. )(pending before the Legislature as this bill).

3 “Health service corporation” means an entity organized pursuant  
4 to P.L.1985, c.236 (C.17:48E-1 et seq.).

5 “Insurance company” means any entity, other than the  
6 reorganized insurer, that engages in the business of insurance.

7 “Intermediate holding company” means an entity of which at  
8 least a majority of the voting shares of the capital stock are at all  
9 times owned directly or indirectly through other intermediate  
10 holding companies by a mutual holding company.

11 “Majority of the voting shares of the capital stock” means, with  
12 respect to any entity, shares of the capital stock of that entity which  
13 carry the right to cast a majority of the votes entitled to be cast by  
14 all of the outstanding shares of the capital stock of that entity for  
15 the election of directors.

16 “Member” means the holder of a membership interest in a mutual  
17 holding company, pursuant to the articles of incorporation or  
18 bylaws of that mutual holding company.

19 “Mutual holding company” means a non-insurance, nonprofit  
20 entity without permanent capital stock organized pursuant to the  
21 laws of this State in accordance with the provisions of  
22 P.L. , c. (C. )(pending before the Legislature as this bill)  
23 for the purpose of holding, directly or indirectly, one hundred  
24 percent interest in a reorganized insurer pursuant to a plan of  
25 reorganization as provided in P.L. , c. (C. )(pending before  
26 the Legislature as this bill). A mutual holding company is an  
27 insurance holding company system pursuant to P.L.1970, c.22  
28 (C.17:27A-1 et seq.), and shall not be qualified as an insurer  
29 licensed to issue insurance policies, insurance contracts or health  
30 benefit plans.

31 “Mutual holding company system” means the structure resulting  
32 from the simultaneous formation of a mutual holding company with  
33 a reorganized insurer in connection with the mutualization and  
34 reorganization of a health service corporation.

35 “Mutual insurer” means a domestic mutual insurer into which a  
36 health service corporation transitions in accordance with the  
37 provisions of P.L.1995, c.196 (C.17:48E-45 et seq.).

38 “Non-insurance subsidiary” means any subsidiary of a mutual  
39 holding company system that is not an insurance company or the  
40 reorganized insurer.

41 “Reorganization” means the simultaneous mutualization of a  
42 health service corporation to a domestic mutual insurer and  
43 transformation from a domestic mutual insurer to a mutual holding  
44 company with a reorganized insurer in accordance with the  
45 provisions of P.L. , c. (C. )(pending before the Legislature  
46 as this bill). A reorganization pursuant to  
47 P.L. , c. (C. )(pending before the Legislature as this bill)

1 in which the mutual holding company remains a charitable and  
2 benevolent institution shall not constitute a material change in form  
3 as defined in section 1 of P.L.2001, c.131 (C.17:48E-49).

4 “Reorganized insurer” means a stock insurer authorized pursuant  
5 to Title 17B of the New Jersey Statutes to transact health insurance  
6 as defined in N.J.S.17B:17-4 and that, pursuant to a plan of  
7 reorganization as provided in P.L. , c. (C. )(pending before  
8 the Legislature as this bill), is a subsidiary of the mutual holding  
9 company system that holds the business of the health service  
10 corporation mutualizing and reorganizing pursuant to  
11 P.L. , c. (C. ) (pending before the Legislature as this bill)  
12 that is related to policies directly written and issued by the health  
13 service corporation. All health insurance or risk-bearing  
14 obligations of the health service corporation shall be undertaken by  
15 the reorganized insurer pursuant to subsection c. and e. of section 3  
16 of P.L. , c. (C. ) (pending before the Legislature as  
17 this bill).

18  
19 3. (New section) a. A mutual holding company organized  
20 pursuant to P.L. , c. (C. )(pending before the Legislature  
21 as this bill) shall not be established as a company organized for  
22 pecuniary profit and shall retain the designation as a charitable and  
23 benevolent institution pursuant to section 41 of P.L.1985, c.236  
24 (C.17:48E-41). A mutual holding company established pursuant to  
25 the provisions of P.L. , c. (C. )(pending before the  
26 Legislature as this bill) shall retain the health service corporation’s  
27 mission while supplementing that mission to promote innovation  
28 and delivery of diversified services.

29 The mission of a mutual holding company shall be to:

30 (1) provide affordable and accessible health insurance to its  
31 members;

32 (2) promote the integration of the health care system to meet the  
33 needs of its members; and

34 (3) promote innovation and delivery of solutions and diversified  
35 services for its members.

36 b. Other than as provided pursuant to P.L. , c. (C. )  
37 (pending before the Legislature as this bill), all property, assets,  
38 rights, liabilities, interest and relations of whatever kind of the  
39 health service corporation, and its subsidiaries, shall be that of the  
40 mutual holding company system. The mutual holding company  
41 shall not be considered a health service corporation.  
42 Notwithstanding anything to the contrary, the provisions of section  
43 41 of P.L.1985, c.236 (C.17:48E-41) shall continue to apply to a  
44 mutual holding company ‘if the mutual holding company continues  
45 to participate in the New Jersey Individual Health Coverage Program  
46 pursuant to P.L.1992, c.161 (C.17B-27A-2 et seq.) and the New Jersey  
47 Small Employer Health Benefits Program pursuant to P.L.1992, c.162

1 (C.17B:27A-17 et seq.). If the mutual holding company does not  
2 participate in the New Jersey Individual Health Coverage Program  
3 pursuant to P.L.1992, c.161 (C.17B-27A-2 et seq.) and the New Jersey  
4 Small Employer Health Benefits Program pursuant to P.L.1992, c.162  
5 (C.17B:27A-17 et seq.) the provisions of section 41 of P.L.1985,  
6 c.236 (C.17:48E-41) shall no longer apply<sup>1</sup>.

7 c. The health insurance duties and obligations pursuant to  
8 P.L.1985, c.236 (C.17:48E-1 et seq.) shall continue and remain in  
9 the succeeding reorganized insurer reorganizing pursuant to  
10 P.L. , c. (C. )(pending before the Legislature as this bill),  
11 in each case, except as provided pursuant to P.L. ,  
12 c. (C. )(pending before the Legislature as this bill). Except  
13 as listed below in subsection e. of this section, all references to a  
14 “health service corporation” in P.L.1985, c.236 (C.17:48E-  
15 1 et seq.), shall refer to a “reorganized insurer” established pursuant  
16 to P.L. , c. (C. )(pending before the Legislature as this  
17 bill) and shall not refer to the mutual holding company.

18 d. In addition to the mutual holding company’s qualification  
19 pursuant to section 2 of P.L. , c. (C. )(pending before the  
20 Legislature as this bill), and for avoidance of doubt, the mutual  
21 holding company shall be expressly excluded from insurance  
22 operations and reporting, investment limits, and risk-bearing  
23 provisions of P.L.1985, c.236 (C.17:48E-1 et seq.), including the  
24 following provisions because a mutual holding company is not a  
25 risk-bearer:

26 (1) Subsection e. of section 1, subsection b. of section 2,  
27 subsection a. of section 3, sections 6 through 9, and section 11 of  
28 P.L.1985, c.236 (C.17:48E-1, C.17:48E-2, C.17:48E-3, C.17:48E-6  
29 through C.17:48E-9, and C.17:48E-11);

30 (2) Section 16 and subsections a. through c. of section 17 of  
31 P.L.1985, c.236 (C.17:48E-16 and C.17:48E-17), section 5 of  
32 P.L.1988, c.71 (C.17:48E-17.1), and section 8 of P.L.1993, c.235  
33 (C.17:48E-17.2);

34 (3) Section 4 of P.L.2017, c.100 (C.17:48E-17.3);

35 (4) Sections 36 and 37 of P.L.1985, c.236 (C.17:48E-36 and  
36 C.17:48E-37); and

37 (5) Sections 31 through 35 of P.L.2014, c.81 (C.17:48E-37.1  
38 through C.17:48E-37.5).

39 e. The reorganized insurer shall engage in risk-bearing  
40 activities, reporting, investments, financial transactions, including  
41 the issuance of dividends or distributions, and insurance trade  
42 practices consistent with laws governing stock insurance companies  
43 organized under Title 17B of the New Jersey Statutes to transact  
44 health insurance as defined in N.J.S.17B:17-4. Notwithstanding the  
45 provisions of subsection c. of this section, the following sections of  
46 P.L.1985, c.236 (C.17:48E-1 et seq.) shall not apply to the

1 reorganized insurer or any insurance company or risk-bearing entity  
2 within the mutual holding company system:

3 (1) Section 4 of P.L.2017, c.100 (C.17:48E-17.3);

4 (2) Sections 31 through 35 of P.L.2014, c.81 (C.17:48E-37.1  
5 through C.17:48E-37.5), but subject to the solvency rules set forth  
6 pursuant to N.J.S.17B:18-70 et seq.; and

7 (3) Subsection e. of section 1, subsection b. of section 2,  
8 subsection a. of section 3, sections 6 through 9, and section 11 of  
9 P.L.1985, c.236 (C.17:48E-1, C.17:48E-2, C.17:48E-3, C.17:48E-6  
10 through C.17:48E-9, and C.17:48E-11).

11 f. The insurance premium rate tax cap law provided by  
12 subsection a. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall  
13 apply to the companies within the mutual holding company system  
14 that have an insurance premium tax liability, and the exclusion from  
15 the tax cap applicable to a health service corporation pursuant to  
16 subsection b. of section 6 of P.L.1945, c.132 (C.54:18A-6) shall not  
17 apply to the mutual holding company or any entity within the  
18 mutual holding company system, including the reorganized insurer,  
19 that has an insurance premium tax liability.

20 g. A mutual holding company system may pursue businesses,  
21 assets, or operations through one or more of its insurance  
22 subsidiaries and non-insurance subsidiaries without a limit on  
23 aggregate revenues from nonconforming affiliates or such pursuits  
24 being considered a material change in form as such term is defined  
25 pursuant to section 1 of P.L.2001, c.131 (C.17:48E-49). The  
26 subsidiaries of the mutual holding company, including the  
27 reorganized insurer, shall be permitted to make dividends or  
28 distributions to the mutual holding company, any subsidiaries  
29 thereof, or both, and shall not be considered a material change in  
30 form as such term is defined pursuant to section 1 of P.L.2001,  
31 c.131 (C.17:48E-49). Dividends and distributions from domestic  
32 insurers, including the reorganized insurer, within the mutual  
33 holding company system shall be subject only to the applicable  
34 provisions of subsection c. of section 4 of P.L.1970, c.22  
35 (C.17:27A-4).

36 h. The continuation of the rights, duties and obligations of a  
37 health service corporation pursuant to this section following  
38 completion of an approved reorganization pursuant to  
39 P.L. , c. (C. ) (pending before the Legislature as this bill)  
40 shall be limited to such rights, duties and obligations pursuant to  
41 P.L.1985, c.236 (C.17:48E-1 et seq.) as of the effective date of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill);  
43 amendments to P.L.1985, c.236 (C.17:48E-1 et seq.) enacted after  
44 the effective date of P.L. , c. (C. ) (pending before the  
45 Legislature as this bill) shall not apply. Notwithstanding the above,  
46 the reorganized insurer shall be subject to the laws applicable to

1 domestic health insurance companies contained in Title 17B of the  
2 New Jersey Statutes <sup>1</sup>and P.L.1970, c.22 (C.17:27A-1 et seq.)<sup>1</sup>.

3  
4 4. (New section) a. A health service corporation organized  
5 pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.) may reorganize to  
6 create a mutual holding company system pursuant to a plan of  
7 reorganization at the same time it applies to transition to a mutual  
8 insurer pursuant to P.L.1995, c.196 (C.17:48E-45 et seq.).  
9 Thereafter, the succeeding mutual holding company system shall be  
10 operated in a manner consistent with sections 1 and 3 of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill).

12 b. The mutual holding company system shall consist of a  
13 mutual holding company and one or more controlled nonprofit or  
14 for-profit subsidiaries, including the reorganized insurer, and shall  
15 be operated for the benefit of its members. The mission of a mutual  
16 holding company shall be as specified in subsection a. of section 3  
17 of P.L. , c. (C. ) (pending before the Legislature as this  
18 bill).

19 c. The mutual holding company and each of its non-insurance  
20 subsidiaries, other than the reorganized insurer and any insurance  
21 company subsidiaries, shall not be:

22 (1) an insurer and therefore shall not be subject to any of the  
23 provisions of N.J.S.17B:18-1 et seq. applicable to stock or mutual  
24 insurers, or to any laws concerning the writing of insurance,  
25 including rules and regulations adopted thereunder, including with  
26 respect to governance, stock or other voting or equity interest, the  
27 writing of insurance, any investment limitations directly applicable  
28 to risk-bearing entities engaged in the writing of insurance such as  
29 those pursuant to N.J.S.17B:20-1 et seq., or any capital or surplus  
30 requirements;

31 (2) authorized to transact the business of insurance; or

32 (3) qualified as an insurer.

33 The writing of insurance shall be permitted only through the  
34 reorganized insurer and other insurance company subsidiaries or  
35 investments of the mutual holding company. Nothing herein shall  
36 alter the oversight of the commissioner with respect to the mutual  
37 holding company and its non-insurance subsidiaries provided for  
38 pursuant to applicable laws and rules of this State relating to  
39 insurance holding company systems.

40 d. A mutual holding company shall be a nonprofit entity  
41 incorporated under, and shall conduct its business pursuant to, the  
42 provisions of Title 15A of the New Jersey Statutes, except that in  
43 situations in which the provisions of that title are inconsistent with  
44 the provisions of P.L. , c. (C. ) (pending before the  
45 Legislature as this bill), the provisions of  
46 P.L. , c. (C. )(pending before the Legislature as this bill)  
47 shall govern.

1 e. At the effective time, members shall receive membership  
2 interests of the mutual holding company, and thereafter 100 percent  
3 of the membership interests of the mutual holding company shall  
4 continue to be held by members, in each case, in the manner set  
5 forth in the articles of incorporation and bylaws of the mutual  
6 holding company.

7 f. The shares of the capital stock of the reorganized insurer  
8 shall be:

9 (1) issued to the mutual holding company or one or more  
10 intermediate holding companies that are wholly-owned by the  
11 mutual holding company; and

12 (2) at all times owned by the mutual holding company or one or  
13 more intermediate holding companies that are wholly-owned by the  
14 mutual holding company.

15 g. The subsidiaries of a mutual holding company system may  
16 be formed by any of the following means:

17 (1) the formation of one or more subsidiaries;

18 (2) amendment or restatement of the articles of incorporation  
19 and bylaws of one or more companies;

20 (3) transfer of assets and liabilities among two or more  
21 companies; <sup>1</sup>**[or]**<sup>1</sup>

22 (4) issuance, acquisition or transfer of capital stock of one or  
23 more companies <sup>1</sup>; or

24 (5) merger or consolidation of two or more companies.

25 h. The mutual holding company shall ensure that any  
26 ownership interest in a subsidiary shall be held by the mutual  
27 holding company, and that any profits generated by that interest are  
28 returned to the mutual holding company<sup>1</sup>.

29  
30 5. (New section) a. A health service corporation may submit  
31 an application to the commissioner to form a mutual holding  
32 company system. <sup>1</sup>Upon submission of an application to the  
33 commissioner, a health service corporation shall immediately  
34 thereafter provide a copy of the application to the Attorney  
35 General.<sup>1</sup> Prior to submission of the application, the board of  
36 directors of the health service corporation shall adopt a resolution  
37 proposing to transition to a mutual insurer and form a mutual  
38 holding company system, at a meeting of the board by a two-thirds  
39 affirmative vote of the total number of directors of the health  
40 service corporation. A copy of the minutes of the meeting at which  
41 that resolution is adopted shall be filed with the commissioner. The  
42 resolution shall include a plan to transition to a mutual insurer and  
43 form a mutual holding company system, including proposed articles  
44 of incorporation and bylaws for the mutual holding company and  
45 proposed articles of incorporation, certificates of formation,  
46 restatements of, or amendments to, existing articles of incorporation  
47 or bylaws, and plans of merger or consolidation, with respect to



1 each entity to be formed, converted or otherwise subject or party to  
2 the transition transactions pursuant to the plan of mutualization and  
3 reorganization.

4 In addition to including information required pursuant to section  
5 2 of P.L.1995, c.196 (C.17:48E-46) for the plan of mutualization,  
6 with respect to the formation of a mutual holding company system  
7 for purposes of this provision, the plan shall include:

8 (1) A description of the structure of the mutual holding  
9 company system consistent with the requirements set forth in  
10 P.L. , c. (C. )(pending before the Legislature as this bill);

11 (2) A description of the qualifications for members'  
12 membership in, and the rights of members of, the mutual holding  
13 company consistent with the requirements set forth in  
14 P.L. , c. (C. ) (pending before the Legislature as this bill);

15 (3) A description of the transactions, and parties to those  
16 transactions, that will affect the mutualization and reorganization,  
17 including, but not limited to, transfer and assumption of policies,  
18 contracts, assets and liabilities, formation of entities, and the  
19 amendment or restatement of certificates of incorporation or  
20 bylaws. The plan of reorganization may provide for the transfer of  
21 assets of a health service corporation and its subsidiaries to the  
22 mutual holding company or one or more subsidiaries of the mutual  
23 holding company in connection with the formation of the mutual  
24 holding company system;

25 (4) The identity of those persons who shall serve as directors  
26 and officers of the mutual holding company, its intermediate  
27 holding companies, if any, and its subsidiaries, including the  
28 reorganized insurer, as of the effective time of the mutualization  
29 and reorganization. The plan shall specify the members of the board  
30 of directors of the health service corporation who shall serve as  
31 initial directors of the mutual holding company, as provided in  
32 section 15 of P.L. , c. (C. )(pending before the Legislature  
33 as this bill);

34 (5) Information sufficient to demonstrate that the financial  
35 condition of the reorganized insurer and the insurance company  
36 subsidiaries of the reorganized insurer shall meet solvency  
37 requirements pursuant to applicable laws and rules of this State  
38 relating to insurance companies after giving effect to the  
39 mutualization and reorganization;

40 (6) A <sup>1</sup>**[representation]** certification<sup>1</sup> that, following the  
41 mutualization and reorganization, the material terms and conditions  
42 of insurance coverage of:

43 (a) policyholders of policies directly written and issued by the  
44 health service corporation shall remain in full force and effect under  
45 policies transferred to and assumed by the reorganized insurer; and

1 (b) all other policyholders shall remain in full force and effect  
2 under policies transferred to and assumed by insurance company  
3 subsidiaries of the mutual holding company;

4 (7) A <sup>1</sup>**【representation】** certification<sup>1</sup> that, following the  
5 mutualization and reorganization, the material terms and conditions  
6 of subordinated surplus notes and other contractual obligations,  
7 other than those arising pursuant to policies described in paragraph  
8 (6) of this subsection, of the health service corporation and its  
9 subsidiaries shall, subject to the rights of the health service  
10 corporation and its subsidiaries pursuant to applicable law, and to  
11 the extent those obligations are not otherwise satisfied or terminated  
12 in accordance with their terms, remain in effect upon the transfer of  
13 those obligations to, and assumption of those obligations by, the  
14 reorganized insurer or one or more other subsidiaries of the mutual  
15 holding company; and

16 (8) A <sup>1</sup>**【representation】** certification<sup>1</sup> that, following the  
17 mutualization and reorganization, the mutual holding company shall  
18 comply with the employment requirements as provided in section  
19 16 of P.L. , c. (C. ) (pending before the Legislature as  
20 this bill).

21 b. Upon the affirmative vote of the board of directors  
22 complying with subsection a. of this section, the plan to form a  
23 mutual holding company system pursuant to P.L. , c. (C. )  
24 (pending before the Legislature as this bill) shall be filed with the  
25 commissioner for approval. Upon filing the plan to form a mutual  
26 holding company system, the obligations pursuant to section 4 of  
27 P.L.2017, c.100 (C.17:48E-17.3) shall be suspended during the  
28 pendency of the commissioner's review process pursuant to this  
29 subsection; if the commissioner approves the plan to form a mutual  
30 holding company, any obligations arising pursuant to section 4 of  
31 P.L.2017, c.100 (C.17:48E-17.3) shall be deemed satisfied by the  
32 initial assessment pursuant to subsection a. of section 13 of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill).  
34 The commissioner shall review the plan to mutualize and reorganize  
35 in accordance with the requirements of subsection a. of section 3 of  
36 P.L.1995, c.196 (C.17:48E-47). <sup>1</sup>**【The public hearing conducted**  
37 **pursuant to subsection a. of section 3 of P.L.1995, c.196 (C.17:48E-**  
38 **47)】** The commissioner shall hold three public hearings on the plan  
39 to form a mutual holding company within 90 days after the  
40 commissioner determines that the filing is complete, with notice  
41 provided by publication in a manner satisfactory to the  
42 commissioner. The public hearings<sup>1</sup> shall also address the plan of  
43 reorganization to the mutual holding company system required by  
44 P.L. , c. (C. )(pending before the Legislature as this bill).  
45 Consistent with subsection a. of section 3 of P.L.1995, c.196  
46 (C.17:48E-47), the commissioner shall approve a plan of

1 mutualization and reorganization unless the commissioner finds the  
2 plan:

3 (1) is contrary to law;

4 (2) would be detrimental to the safety or soundness of the  
5 proposed reorganized insurer and insurance company subsidiaries  
6 of the proposed mutual holding company; or

7 (3) <sup>1</sup>‘[prejudices] does not benefit<sup>1</sup>’ the interests of the  
8 policyholders of the health service corporation or treats them  
9 inequitably.

10 The commissioner may engage the services of experts and  
11 consultants to advise on any matters related to the application <sup>1</sup>, and  
12 if a written study or other expert report is prepared, it shall be made  
13 available to the applicant within a reasonable period of time prior to  
14 the initial public hearing. The commissioner may also engage the  
15 services of a consultant to conduct a health impact study of the  
16 effects of the reorganization on the health of the policy holders of  
17 the health service corporation, and the general public<sup>1</sup>. The  
18 engagement shall not be subject to Chapter 32 of Title 52 of the  
19 Revised Statutes and all costs related to such engagement for the  
20 examination and deliberations of the application shall be paid by the  
21 health service corporation that makes the filing, both for services  
22 prior to the effective time and for services after the effective time.  
23 At the expiration of 30 days after the <sup>1</sup>‘final’ public hearing, the  
24 commissioner shall approve or disapprove the plan of mutualization  
25 and reorganization and shall set forth the decision in writing and  
26 shall state the reasons therefor. The commissioner shall inform the  
27 health service corporation of the specific reasons for the disapproval  
28 of any plan of mutualization and reorganization and provide a cure  
29 period of no shorter than 90 days to cure any deficiencies. Any  
30 disapproval shall be subject to judicial review as a final decision of  
31 a State administrative agency.

32 c. A plan of mutualization and reorganization may be amended,  
33 terminated, or approved consistent with P.L. , c. (C. )  
34 (pending before the Legislature as this bill). A plan of  
35 mutualization and reorganization adopted by the board of directors  
36 of the applicant may be:

37 (1) Amended by the board of directors of the applicant in  
38 response to the comments or recommendations of the commissioner  
39 at any time; or

40 (2) Terminated by the board of directors of the applicant at any  
41 time. An applicant that has terminated a plan to form a mutual  
42 holding company system shall be deemed to have also terminated  
43 the application to transition to a mutual insurer.

44 d. An approved plan of mutualization and reorganization shall  
45 be effective at the effective time specified in the plan of  
46 reorganization, or such other time subsequently requested by the  
47 applicant and agreed to by the commissioner.

6. (New section) A mutual holding company system shall be considered an insurance holding company system and subject to P.L.1970, c.22 (C.17:27A-1 et seq.). <sup>1</sup>The commissioner shall possess supervisory powers with respect to the insurance holding company system which shall include the authority to monitor the mutual holding company systems financial health, enterprise risk, and examine its operations pursuant to P.L.1070, c.22 (C.17:27A-1 et seq.).<sup>1</sup> Notwithstanding the foregoing, solely with regard to the transactions set forth in the application to form a mutual holding company system filed pursuant to section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), a mutual holding company system shall not be required to seek separate approval for an acquisition of controlling stock, ownership interest, assets or control, or for a <sup>1</sup>merger or consolidation.<sup>1</sup> share exchange, organization, or reorganization of insurance companies within the mutual holding company system, or other transactions set forth in the application to form a mutual holding company system. Thereafter, any future transactions not approved as part of the application to form a mutual holding company system, shall be subject to the applicable requirements of P.L.1970, c.22 (C.17:27A-1 et seq.). As an insurance holding company system subject to P.L.1970, c.22 (C.17:27A-1 et seq.), the commissioner shall have the power to order production of any records, books, or other information and papers in the possession of a mutual holding company system as are reasonably necessary to ascertain the financial condition of the mutual holding company system or to determine compliance with P.L. , c. (C. )(pending before the Legislature as this bill).

7. (New section) a. A mutual holding company or a non-insurance subsidiary may, alone or together, make any lawful investments including directly or indirectly acquiring or otherwise holding the stock or other ownership interests of any nonprofit or for-profit entities.

b. Insurance company subsidiaries and the reorganized insurer may make investments, including investments in non-insurance entities subject to investment and asset limitations pursuant to applicable laws and rules relating to insurance companies.

<sup>1</sup>c. The mutual holding company and its non-insurance and insurance company subsidiaries shall continue to operate a diverse supplier program that promotes and invests in the utilization of minority-owned and women-owned businesses in the procurement of goods and services, including professional services. The mutual holding company shall include in its annual filing pursuant to subsection b. of section 11 of P.L. , c. (C. ) (pending before the Legislature as this bill) information on this subsection.<sup>1</sup>

1       8. (New section) Neither the adoption nor the implementation  
2 of a plan of mutualization and reorganization shall be deemed to  
3 give rise to any obligation by or on behalf of any entity in the  
4 mutual holding company system or any predecessor entity to make  
5 any distribution or payment to any member or policyholder, or to  
6 any other person, fund, or entity of any nature whatsoever, in  
7 connection with the ownership, control, benefits, policies, purpose,  
8 or nature of any entity in the mutual holding company system, any  
9 predecessor entity or otherwise.

10  
11       9. (New section) a. Membership in a mutual holding company  
12 shall be determined in accordance with the mutual holding  
13 company's articles of incorporation and bylaws and may be based  
14 upon:

15       (1) the amount of health insurance policies in force with the  
16 reorganized insurer;

17       (2) the amount of the health insurance premiums paid to the  
18 reorganized insurer; or

19       (3) other reasonable factors.

20       A mutual holding company may also consider the amount of  
21 premiums paid to, or policies in force under, affiliated insurance  
22 companies operating under the same brand licensee program as the  
23 reorganized insurer and permit entities holding administrative  
24 services agreements with the mutual holding company to be  
25 members of the mutual holding company. The mutual holding  
26 company may provide in its bylaws the basis for the number of  
27 votes those entities will have as members of the mutual holding  
28 company.

29       b. Members of a mutual holding company shall be entitled to  
30 vote for the election of directors of the mutual holding company in  
31 accordance with the mutual holding company's bylaws. Directors  
32 of the mutual holding company shall be elected from nominees  
33 selected by the nominating and governance committee of the board  
34 of directors of the mutual holding company, or a comparably  
35 authorized committee, except for public directors serving in  
36 accordance with section 15 of P.L. , c. (C. )(pending  
37 before the Legislature as this bill).

38       c. No member of a mutual holding company shall transfer  
39 membership or any right arising therefrom.

40       d. Except as specified in subsection b. of this section, a  
41 membership interest in a mutual holding company shall not be  
42 deemed to give rise to any other rights, including any ownership  
43 interests in, or ownership rights with respect to, the assets of any  
44 entity in the mutual holding company system or any predecessor  
45 entity, and shall not be deemed to give rise to any entitlement to  
46 receive payment of any dividend or other distribution in connection  
47 with the ownership, control, benefits, policies, purpose or nature of

1 any entity in the mutual holding company system or any  
2 predecessor entity.

3 e. A member of a mutual holding company is not personally  
4 liable for the acts, debts, liabilities or obligations of the mutual  
5 holding company solely because of the member's membership  
6 status.

7 f. No assessments shall be imposed upon the members of a  
8 mutual holding company by the directors or members, or because of  
9 any liability, act, debt or obligation of the mutual holding company  
10 or of any company owned or controlled by the mutual holding  
11 company.

12 g. A membership interest in a mutual holding company shall  
13 not constitute a security pursuant to the laws of this state.

14

15 10. (New section) Upon any voluntary dissolution of a mutual  
16 holding company in accordance with N.J.S.15A:12-2, 15A:12-3,  
17 15A:12-4, 15A:12-5, 15A:12-6, 15A:12-7, or section 19 of  
18 P.L.1992, c.65 (C.17B:32-49), the mutual holding company shall  
19 adopt a plan of dissolution in accordance with N.J.S.15A:12-8. The  
20 plan shall provide that any assets of the mutual holding company  
21 remaining after the discharge of all liabilities and obligations, if  
22 any, shall be distributed in accordance with N.J.S.15A:12-8.

23

24 11. (New section) a. A mutual holding company shall file with  
25 the commissioner an annual statement pursuant to applicable laws  
26 of this State.

27 b. The mutual holding company shall, on an annual basis, and  
28 in a form and manner prescribed by the Department of Banking and  
29 Insurance, file with the department information relating to the  
30 mutual holding company's operations, including but not limited to  
31 the following: the mutual holding company's mission, activities,  
32 revenues, expenses, assets, liabilities, and total compensation  
33 provided to officers, directors, trustees and the five other highest  
34 compensated employees who are not an officer, director or trustee,  
35 which information shall be posted on the department's website.

36 c. The commissioner shall report to the Governor, and to the  
37 Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),  
38 on the compliance of the mutual holding company with the  
39 provisions of P.L. , c. (C. ) (pending before the  
40 Legislature as this bill).

41

42 <sup>1</sup>12. (New section) All information, documents and copies of  
43 information and documents obtained by or disclosed to the  
44 commissioner, the Department of Banking and Insurance, or any  
45 other person in the course of preparing, filing or processing an  
46 application to reorganize pursuant to P.L. , c. (C. )  
47 (pending before the Legislature as this bill), including the annual

statement required pursuant to section 11 of P.L. , c. (C. )  
 (pending before the Legislature as this bill), other than information  
 or documents distributed to policyholders in connection with the  
 plan of reorganization or election of directors, shall be subject to  
 the confidentiality requirements set forth in section 6 of P.L.1970,  
 c.22 (C.17:27A-6).<sup>1</sup>

<sup>1</sup>12. (New section) a. The application submitted pursuant to  
 section 5 of P.L. , c. (C. )(pending before the Legislature as  
 this bill) shall be a public record, except for the following  
 documents, which shall be confidential and not public records:

(1) documents deemed confidential by statute or regulation;

(2) the business plan, capitalization plan, financial projections,  
 and market competitive data; and

(3) any other information the commissioner determines could  
 result in harm to the health service corporation, mutual holding  
 company, reorganized insurer or other insurance entity within the  
 mutual holding company system, or the public interest, if disclosed.

b. The commissioner shall provide the public with prompt and  
 reasonable access to public records relating to the proposed  
 reorganization of the health service corporation. The commissioner  
 shall make the public records received pursuant to  
 P.L. , c. (C. )(pending before the Legislature as this bill)  
 available for inspection at no cost to the public. These public  
 records shall be made available to the public in connection with the  
 public hearing to be held pursuant to P.L. , c. (C. )(pending  
 before the Legislature as this bill).<sup>1</sup>

13. (New section) a. Following regulatory approval pursuant to  
 section 5 of P.L. , c. (C. )(pending before the Legislature  
 as this bill) and the establishment of a mutual holding company, the  
 mutual holding company, <sup>1</sup>through itself or any of its affiliates or  
 any affiliates benefiting from the establishment of a mutual holding  
 company<sup>1</sup>, shall pay an initial assessment to the State Treasury in  
 the amount of \$600,000,000 by June 1, 2022 if the effective time  
 precedes June 1, 2022. If the effective time is later than June 1,  
 2022, the initial assessment shall be due by June 1 of the calendar  
 year following the effective time. The initial assessment shall be a  
 one-time, nonrecurring State business tax on the <sup>1</sup>reorganized  
 insurer mutual holding company and its affiliates<sup>1</sup>.

b. Following the initial assessment, and subject to subsections  
 c. and d. of this section, the mutual holding company, <sup>1</sup>through  
 itself or any of its affiliates or any affiliates benefiting from the  
 establishment of a mutual holding company<sup>1</sup>, shall pay a limited  
 duration business tax by June 1 of each calendar year beginning  
 with the calendar year following the initial assessment, and for a

1 period of seventeen years. The total assessment, including both the  
2 initial and annual assessments, shall not exceed \$1,250,000,000.  
3 The annual assessments represent a limited duration state business  
4 tax on the <sup>1</sup>~~reorganized insurer's~~ mutual holding company and its  
5 affiliates<sup>1</sup> business payable by the mutual holding company or any  
6 <sup>1</sup>~~of its~~ affiliates benefiting from the establishment of a mutual  
7 holding company<sup>1</sup>, and shall be based on the following schedule  
8 with earned premiums defined consistent with 45 C.F.R, 158.130:

9 (1) For annual assessment 1, 20 percent of the reorganized  
10 insurer's earned premiums for the calendar year preceding that  
11 assessment, with the assessment not to exceed \$100,000,000.

12 (2) For annual assessments 2 through 11, 5 percent of the  
13 reorganized insurer's earned premiums for the calendar year  
14 preceding a given year's assessment, with each year's assessment  
15 not to exceed \$25,000,000.

16 (3) For annual assessments 12 through 17, 10 percent of the  
17 reorganized insurer's earned premiums for the calendar year  
18 preceding a given year's assessment, with each year's assessment  
19 not to exceed \$50,000,000.

20 c. The mutual holding company shall not pay any portion of  
21 the annual assessment for a given calendar year if the mutual  
22 holding company's system-wide health risk-based capital  
23 authorized control level would fall below 550 percent based on the  
24 standards for risk based capital for health organizations as adopted  
25 by the National Association of Insurance Commissioners following  
26 the payment as applied against the prior calendar year's risk based  
27 capital, or if in the opinion of any nationally recognized statistical  
28 rating organization, the group credit rating of the mutual holding  
29 company would not be considered investment grade. <sup>1</sup>The  
30 commissioner shall determine that the mutual holding company's  
31 system-wide health risk-based capital authorized control level  
32 would fall below 550 percent before payments shall be deferred  
33 pursuant to this subsection and paragraph (1) of subsection d. of this  
34 section. Neither the insurance company subsidiaries nor the  
35 reorganized insurer shall make dividends or distributions to the  
36 mutual holding company or any subsidiaries thereof until such time  
37 as the annual assessment deferred pursuant to paragraph (1) of  
38 subsection d. of this section is satisfied.<sup>1</sup>

39 d. (1) If the mutual holding company does not pay the annual  
40 assessment for a given calendar year pursuant to subsection c. of  
41 this section, the annual assessment that was not paid shall be  
42 deferred to the subsequent calendar year, which shall be the deferral  
43 date for the deferred annual assessment, with all subsequent annual  
44 assessments pursuant to subsection b. of this section also deferred  
45 by another calendar year so that no two annual assessments are due  
46 in the same calendar year. If an annual assessment is deferred, that



1 annual assessment shall not be required by law to be paid until the  
2 deferral date.

3 (2) Notwithstanding the provisions of paragraph (1) of this  
4 subsection to the contrary, the assessment years pursuant to  
5 subsection b. of this section shall not be extended beyond, and the  
6 payment obligation pursuant to this section shall cease to exist after,  
7 the date that is <sup>1</sup>~~20~~ 25<sup>1</sup> years from the effective time.

8 e. The initial assessment is a one-time business tax imposed on  
9 the mutual holding company system and the annual assessment is a  
10 limited duration business tax imposed on the mutual holding  
11 company system based on the reorganized insurer's business. The  
12 assessment of additional taxes, penalties and interest shall be as  
13 provided by the "State Uniform Tax Procedure Law," R.S.54:48-1  
14 et seq.; provided that no interest shall accrue or penalty shall be  
15 levied on a deferred annual assessment.

16  
17 14. (New section) A mutual holding company formed pursuant  
18 to P.L. , c. (C. ) (pending before the Legislature as this  
19 bill) shall not convert to a for-profit stock holding company. The  
20 provisions of P.L.2001, c.131 (C.17:48E-49 et seq.) providing for  
21 conversion of a health service corporation to a domestic stock  
22 insurer shall not apply to a mutual holding company formed  
23 pursuant to P.L. , c. (C. ) (pending before the Legislature  
24 as this bill).

25  
26 15. (New section) a. The board of the mutual holding company  
27 shall be constituted of 22 directors as follows:

28 (1) 13 directors shall be elected, as provided in the bylaws, one  
29 of whom shall be the chair;

30 (2) 5 directors shall be public directors appointed by the  
31 Governor with the advice and consent of the Senate;

32 (3) 2 directors shall be public directors appointed by the Senate  
33 President; and

34 (4) 2 directors shall be public directors appointed by the Speaker  
35 of the General Assembly.

36 b. Upon the effective time, the term of office of the public  
37 directors of the reorganized insurer shall <sup>1</sup>not immediately<sup>1</sup> expire  
38 <sup>1</sup>but rather shall be temporarily continued and each such director  
39 shall continue in holdover status until such time as the appointing  
40 authority reappoints or renames such director or appoints or names  
41 another director<sup>1</sup>. The initial board of directors of the mutual  
42 holding company shall be:

43 (1) the elected directors of the reorganized insurer supplemented  
44 by additional elected directors nominated and elected by the mutual  
45 holding company's board after the effective time for a total number  
46 of elected directors specified in paragraph (1) of subsection a. of  
47 this section;

1 (2) 5 public directors appointed by the Governor with the advice  
2 and consent of the Senate <sup>1</sup>【within 30 days after the effective  
3 time】<sup>1</sup>;

4 (3) 2 public directors named by the Senate President <sup>1</sup>【within 30  
5 days after the effective time】<sup>1</sup>; and

6 (4) 2 public directors named by the Speaker of the General  
7 Assembly <sup>1</sup>【within 30 days after the effective time】<sup>1</sup>.

8 c. Each elected director shall have a term of three years with up  
9 to two successive three-year terms following the initial term for up  
10 to a total of three successive terms, and as provided for in the  
11 bylaws, with such other term and term limits specifically applying  
12 to the individual directors. The chief executive officer or president  
13 of the mutual holding company shall be an elected director at all  
14 times and shall not be subject to any term limit or election pursuant  
15 to section 9 of P.L. , c. (C. )(pending before the  
16 Legislature as this bill). The board of directors <sup>1</sup>【or the members】<sup>1</sup>,  
17 as provided by the bylaws, shall elect a chair, who shall be a  
18 member of the board elected pursuant to paragraph (1) of subsection  
19 a. of this section. Each director elected pursuant to paragraph (1) of  
20 subsection a. of this section shall meet the statutory and regulatory  
21 qualifications for the mutual holding company system's businesses  
22 and be free from conflicts of interest that would prohibit the person  
23 from materially executing the person's duties as a director. Each  
24 public director shall <sup>1</sup>【serve at the pleasure of the appointing  
25 authority】 have a term of three years with up to two successive  
26 three-year terms following the initial term, for a total of up to three  
27 successive terms. Upon the effective time, the terms of office of the  
28 public directors of the reorganized insurer shall continue until their  
29 respective successors are appointed and qualified. No period during  
30 which a public director holds over shall be deemed to be an  
31 extension of the public director's term of office for the purpose of  
32 determining the date on which a successor's term expires<sup>1</sup>.

33 d. There shall be a transitional period of 18 months following  
34 the effective time before elected directors of the mutual holding  
35 company are subject to election by its members pursuant to section  
36 9 of P.L. , c. (C. )(pending before the Legislature as this  
37 bill). The first election shall occur at the first annual meeting  
38 following the transitional period, and in accordance with the mutual  
39 holding company's bylaws.

40 <sup>1</sup>e. To the extent practicable, the mutual holding company shall  
41 make best efforts to reflect the racial, ethnic, and gender diversity  
42 of the communities that it serves throughout the organization,  
43 including the board of directors and executive leadership, to achieve  
44 its mission.<sup>1</sup>

1       16. (New section) a. Upon the formation of a mutual holding  
2 company, the total number of full-time employees that were  
3 employed within a mutual holding company system shall be  
4 maintained for a transition period of <sup>1</sup>~~24~~ 36<sup>1</sup> months following  
5 that formation based on the full-time employee count of the health  
6 service corporation as of September 30, 2019, except as provided in  
7 subsection b. of this section.

8       b. This section shall not:

9       (1) supersede the terms of any collective bargaining  
10 agreement; or

11       (2) require a mutual holding company system to replace  
12 headcount lost due to voluntary attrition or terminations for cause,  
13 including for performance, or replace any loss of headcount  
14 attributable to a decline in enrollment, market share, or loss of a  
15 major account.

16       c. This section shall expire following the transition period of  
17 <sup>1</sup>~~24~~ 36<sup>1</sup> months following the formation of a mutual holding  
18 company.

19  
20       17. Section 1 of P.L.2001, c.131 (C.17:48E-49) is amended to  
21 read as follows:

22       1. As used in this act:

23       “Affiliate” or “affiliated” has the meaning set forth in subsection  
24 a. of section 1 of P.L.1970, c. 22 (C.17:27A-1).

25       “Alternative foundation plan” means the plan submitted to the  
26 Attorney General and the commissioner pursuant to section 18 of  
27 this act.

28       “Application” means the application for approval of a plan of  
29 conversion filed with the commissioner pursuant to section 3 of this  
30 act.

31       “Attorney General” means the Attorney General of the State of  
32 New Jersey.

33       “Commissioner” means the Commissioner of Banking and  
34 Insurance.

35       “Control” has the meaning set forth in subsection c. of section 1  
36 of P.L.1970, c. 22 (C.17:27A-1).

37       “Conversion” means the process by which a health service  
38 corporation converts to a domestic stock insurer in accordance with  
39 the provisions of sections 2 through 14 and section 19 of this act.

40       “Converted insurer” means the domestic stock insurer into which a  
41 health service corporation converts in accordance with the  
42 provisions of sections 2 through 14 and section 19 of this act.

43       “Domestic stock insurer” means a for-profit stock insurer  
44 authorized pursuant to Title 17B of the New Jersey Statutes to  
45 transact health insurance as defined in N.J.S.17B: 17-4.

1       “Effective time” means the date and time at which the conversion  
2 of a health service corporation is effective, as provided in section 11  
3 of this act.

4       “Foundation” means the foundation or foundations established  
5 under section 18 or 19 of this act.

6       “Foundation plan” means the plan submitted to the Attorney  
7 General pursuant to section 19 of this act.

8       “Health service corporation” means a health service corporation  
9 established pursuant to P.L.1985, c. 236 (C.17:48E-1 et seq.).

10       “Material change in form” means any action or series of actions  
11 that effect a fundamental corporate change which involves a  
12 transfer of ownership or control of assets of the health service  
13 corporation or a change of the mission or purpose of the health  
14 service corporation, including, without limitation, the purchase,  
15 lease, exchange, conversion, restructuring, merger, division,  
16 consolidation or transfer of control, bulk reinsurance or other  
17 disposition or transfer of a substantial amount of business, line of  
18 business, assets or operations of the health service corporation,  
19 including the transfer, directly or indirectly, of a substantial amount  
20 of the health service corporation's business, line of business, assets  
21 or operations to one or more nonconforming affiliates. A material  
22 change in form by the transfer, directly or indirectly, of a  
23 substantial amount of the health service corporation's business, line  
24 of business, assets or operations to one or more nonconforming  
25 affiliates shall not be deemed to occur so long as, during the most  
26 recent four prior consecutive calendar quarters: (1) the aggregate  
27 revenues of all nonconforming affiliates do not exceed 50 percent  
28 of the aggregate revenues for the health service corporation and all  
29 affiliates; (2) the aggregate revenues of all nonconforming affiliates  
30 derived from providing individual or group health coverage to  
31 residents of New Jersey equal or exceed 50 percent of the aggregate  
32 revenues from all nonconforming affiliates; and (3) the aggregate  
33 assets of all nonconforming affiliates do not exceed 50 percent of  
34 the aggregate assets of the health service corporation and all  
35 affiliates. Notwithstanding the above, a reorganization approved by  
36 the commissioner pursuant to section 5 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)  
37 (pending before the Legislature as this bill), whereby the mutual  
38 holding company is a charitable and benevolent institution as  
39 provided in section 41 of P.L.1985, c.236 (C.17:48E-41), shall not  
40 constitute a material change in form for purposes of P.L.2001, c.131  
41 (C.17:48E-49 et seq.).

42       “Nonconforming affiliate” means any affiliate of a health service  
43 corporation that: (1) operates on a for-profit basis, or (2) operates  
44 on a nonprofit basis and does not have a purpose the same as or  
45 substantially similar to that of the health service corporation.

46       “Parent corporation” means a stock corporation incorporated  
47 under the laws of this State that is or has been organized for the

1 purpose of acquiring, directly or indirectly, control of the converted  
2 insurer pursuant to the plan of conversion.

3 “Petition” means the petition for approval of a foundation plan  
4 submitted to the Attorney General pursuant to subsection a. of  
5 section 19 of this act.

6 “Plan of conversion” means the written plan of conversion  
7 adopted by the health service corporation in compliance with  
8 section 2 of this act.

9 “Policy” means an individual or group policy or contract of  
10 insurance, including, without limitation, any certificate, rider,  
11 endorsement, plan or product offering issued by or binding upon the  
12 health service corporation.

13 “Subscriber” means a person covered by or entitled to benefits  
14 under any policy, including, but not limited to, the persons  
15 described in subsection k. of section 1 of P.L.1985, c. 236  
16 (C.17:48E-1).

17 (cf: P.L.2001, c.131, s.1)

18

19 18. Section 1 of P.L.1970, c. 22 (C.17:27A-1) is amended to  
20 read as follows:

21 1. Definitions.

22 As used in P.L.1970, c. 22 (C.17:27A-1 et seq.), the following  
23 terms shall have the respective meanings hereinafter set forth,  
24 unless the context shall otherwise require:

25 a. An “affiliate” of, or person “affiliated” with, a specific  
26 person, is a person that directly, or indirectly through one or more  
27 intermediaries, controls, or is controlled by, or is under common  
28 control with, the person specified.

29 b. The term “commissioner” shall mean the Commissioner of  
30 Banking and Insurance or the commissioner's deputies.

31 c. The term “control” (including the terms “controlling,”  
32 “controlled by” and “under common control with”) means the  
33 possession, direct or indirect, of the power to direct or cause the  
34 direction of the management and policies of a person, whether  
35 through the ownership of voting securities, by contract other than a  
36 commercial contract for goods or nonmanagement services, or  
37 otherwise, unless the power is the result of an official position with  
38 or corporate office held by the person. Control shall be presumed to  
39 exist if any person, directly or indirectly, owns, controls, holds with  
40 the power to vote, or holds proxies representing, 10% or more of the  
41 voting securities of any other person, provided that no such  
42 presumption of control shall of itself relieve any person so  
43 presumed to have control from any requirement of P.L.1970, c. 22  
44 (C.17:27A-1 et seq.). This presumption may be rebutted by a  
45 showing made in the manner provided by subsection j. of section 3  
46 of P.L.1970, c. 22 (C.17:27A3) that control does not exist in fact.  
47 The commissioner may determine, after furnishing all persons in

1 interest notice and an opportunity to be heard, and making specific  
2 findings of fact to support such determination, that control exists in  
3 fact, notwithstanding the absence of a presumption to that effect.

4 d. An “insurance holding company system” consists of two or  
5 more affiliated persons, one or more of which is an insurer. A  
6 mutual holding company system resulting from a mutualization and  
7 reorganization of a health service corporation pursuant to section 5  
8 of P.L. , c. (C. )(pending before the Legislature as this  
9 bill), shall be an insurance holding company system pursuant to  
10 P.L.1970, c. 22 (C.17:27A-1 et seq.).

11 e. The term “insurer” means any person or persons,  
12 corporation, partnership or company authorized by the laws of this  
13 State to transact the business of insurance or to operate a health  
14 maintenance organization in this State, except that it shall not  
15 include agencies, authorities or instrumentalities of the United  
16 States, its possessions and territories, the Commonwealth of Puerto  
17 Rico, the District of Columbia, or a state or political subdivision of  
18 a state.

19 f. A “person” is an individual, a corporation, a limited liability  
20 company, partnership, an association, a joint stock company, a trust,  
21 an unincorporated organization, any similar entity or any  
22 combination of the foregoing acting in concert.

23 g. (Deleted by amendment, P.L.1993, c. 241).

24 h. A “subsidiary” of a specified person is an affiliate controlled  
25 by such person directly, or indirectly through one or more  
26 intermediaries.

27 i. The term “voting security” shall include any security  
28 convertible into or evidencing a right to acquire a voting security.

29 j. “Acquisition” means any agreement, arrangement or  
30 activity, the consummation of which results in a person acquiring  
31 directly or indirectly the control of another person, and includes but  
32 is not limited to the acquisition of voting securities, and assets, and  
33 bulk reinsurance and mergers.

34 k. “Health maintenance organization” means any person  
35 operating under a certificate of authority issued pursuant to  
36 P.L.1973, c. 337 (C.26:2J-1 et seq.).

37 l. “Enterprise risk” means any activity, circumstance, event or  
38 series of events involving one or more affiliates of an insurer that, if  
39 not remedied promptly, is likely to have a material adverse effect  
40 upon the financial condition or liquidity of the insurer or its  
41 insurance holding company system as a whole, including, but not  
42 limited to, anything that would cause the insurer's Risk-Based  
43 Capital to fall into company action level as set forth in  
44 administrative rules adopted by the commissioner which reflect the  
45 standards set forth in the Risk-Based Capital For Insurers Model  
46 Act adopted by the National Association of Insurance  
47 Commissioners or would cause the insurer to be in hazardous

1 financial condition as defined in administrative rules adopted by the  
2 commissioner which reflect the standards set forth in the Model  
3 Regulation adopted by the National Association of Insurance  
4 Commissioners to define standards and the commissioner's  
5 authority over companies deemed to be in a hazardous  
6 financial condition.

7 (cf: P.L.2014, c.81, s.1)

8  
9 19. (New section) a. The provisions of P.L. , c. (C. )  
10 (pending before the Legislature as this bill) shall be severable; and  
11 if any phrase, clause, sentence, or provision is deemed  
12 unenforceable, the remaining provisions of P.L. , c. (C. )  
13 (pending before the Legislature as this bill) shall be enforceable.

14 b. The provisions of P.L. , c. (C. ) (pending before the  
15 Legislature as this bill) shall be liberally construed to effectuate its  
16 purposes.

17  
18 20. This act shall take effect immediately.

19  
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22  
23 Provides for reorganization of health service corporation.